

ARKANSAS DEVELOPMENT FINANCE AUTHORITY'S  
HOUSING CREDIT PROGRAM 2009 QUALIFIED ALLOCATION PLAN GUIDANCE  
TO IMPLEMENT THE TAX CREDIT ASSISTANCE PROGRAM ("TCAP") AND  
THE SECTION 1602 EXCHANGE/SUBWARD PROGRAM OF  
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Pursuant to Section 42 of the Internal Revenue Code, 26 USC § 42, the Arkansas Development Finance Authority (the "Authority") must annually adopt a Qualified Allocation Plan ("QAP") that establishes selection and program criteria for the allocation of federal low-income housing tax credits from the State's annual ceiling. On July 17, 2008, and August 21, 2008, the Board of Directors for the Authority adopted its QAP for 2009. Due to the reduction or complete loss of federal low-income housing tax credit investor equity, President Obama signed into law the American Recovery and Reinvestment Act ("ARRA"), Public Law 111-5 on February 17, 2009. ARRA established two subsidy provisions to assist those developments that have been or will be awarded tax credits in 2007, 2008 and 2009. The first is the Tax Credit Assistance Program ("TCAP") which provides \$20,463,053 in federal funding to Arkansas from HUD for the express purpose of providing financing to those taxpayers "awarded" low-income housing tax credits under Section 42(h) of the Internal Revenue Code (IRC) in fiscal years 2007, 2008 and 2009. The second is a grant program whereby Arkansas can elect to receive a grant of funds in an amount up to \$.85 per tax credit for tax credits consisting of all unused and returned credits held by the Authority plus 40% of our 2009 state ceiling (not including disaster credits). This is referred to as the "exchange program". In addition to the stimulus funding provided by the ARRA, the Board of Directors has implemented two additional initiatives to assist existing developments in need of additional financing: 1) Pursuant to 26 USC § 42(d)(5), the Board of Directors has designated certain existing developments as difficult to develop entitling them to a 30% basis boost; and 2) provide additional tax credits to those developments in need of additional financing.

Distribution of the \$20,463,053 in TCAP funding must be done on a competitive basis. The Board of Directors has determined to award TCAP funding in association with the other funding sources available as indicated by the financial needs of the applicant. The following "ARKANSAS'S THREE TIER SELECTION PROCESS" and 2009 Guidance and Procedures have been approved by the Board of Directors on May 15, 2009, and June 18, 2009, respectively, for the distribution of TCAP funds and Exchange Program fund.

**ARKANSAS' THREE TIER SELECTION PROCESS**

**2006, 2007 and 2008 ALLOCATION RECIPIENTS:**

1. **TIER ONE** – INITIALLY CONSIDER TO ALLOCATE UNUSED, RETURNED AND AS NEEDED 2009 TAX CREDITS
  - a. Additional Tax Credits Only. Per the Board's directive of December, 2008, staff will allocate/reserve additional tax credits to those 2006, 2007 and 2008 owners that have not been issued IRS Forms 8609.
  - b. Application will be by submission of a 2009 Special Application to include updated financial commitment letters and an updated Pro Forma, Attachment C. Applicants must meet the minimum debt coverage ratio of 1.10.
  - c. Application must be submitted by the deadline date determined by ADFA.
  - d. Additional tax credits must be purchased at no less than \$.50 per additional tax credit requested. Recipients of additional tax credits will not be eligible to return any tax credits allocated or reserved by ADFA for the purpose of receiving TCAP funds or an Exchange/Subaward.
  - e. Pursuant to Section 42, eligibility for additional tax credits is determined as follows:

- i. If development buildings placed in service in 2009, or will place in service in 2010, and credit eligibility has increased due to 9% credit percentage requirement of Section 3002 of P.L. 110-289 and 30% basis boost per Board directive of January, 15, 2009 (available for new buildings only).
    - ii. After building's 1<sup>st</sup> tax credit year and only if the LIHTC qualified basis has increased by virtue of increase in number of LIHTC units or LIHTC square footage. In this instance, the  $\frac{2}{3}$  rule of Section 42(f)(3) of the Internal Revenue Code. Will require Board approval to increase LIHTC units from original application.
    - iii. The amount of additional tax credits plus any previous allocation cannot exceed the maximum amount allowed pursuant to *Section IIIA. of the 2009 Qualified Allocation Plan.*
  - f. These developments will not be entitled to TCAP, an Exchange/Subaward, or additional HOME funds because they have not competed for these types of financing as required below.
2. **TIER TWO** – CONSIDERED AFTER DETERMINE AMOUNT OF CREDITS REMAINING AFTER TIER ONE AWARDS FOR PURPOSES OF AWARDING ADDITIONAL TAX CREDITS; TCAP EXCHANGE/SUBAWARDS AND/OR ADDITIONAL HOME FUNDS.
- a. Application will be by submission of a 2009 Special Application, to provide information required for the TCAP and Exchange/Subaward Programs, to include updated financial commitment letters, an updated Pro Forma, Attachment C, and, if applicable, updated attachment G. Applicants must meet the minimum debt coverage ratio of 1.10.
  - b. Applications for funding will only be considered if the applicant is eligible for such funding pursuant to the American Recovery and Reinvestment Act and Section 42 of the Internal Revenue Code and if submitted by the deadline date determined by ADFA.
  - c. To be eligible for TCAP funds, the applicant must retain no less than \$1,000 in annual federal low-income housing tax credits, or, \$10,000 in the aggregate.
  - d. Applications requesting TCAP funds will be based upon priority and competitive scoring as follows:
    - i. Certification to a development timeline that verifies the development will expend 100% of the TCAP funds awarded no later than November 15, 2010 and will place in service no later than December 31, 2011. Failure to make the certifications eliminate the applicant's eligibility for funding separate from that in the applicant's ORIGINAL APPLICATION. Failure to adhere to the timelines required will result in a recapture of tax credits, TCAP or Exchange/Subaward funds, as applicable.
    - ii. The Final Score received with 2008 scores adjusted to match 2007 scoring criteria. (The Final Score for 2008 will be reduced by any bonus points received under Item #11 "Market Feasibility Study" as the bonus points were not available for 2007. With this reduction, the scoring criteria for 2007 and 2008 are identical); and
    - iii. 5 priority points to those applicants requesting additional tax credits. Additional tax credits must be purchased at no less than \$.50 per additional tax credit requested. Recipients of additional tax credits will not be eligible to return any tax credits allocated or reserved by ADFA for the purpose of receiving TCAP funds or an Exchange/Subaward.
    - iv. In the event of a tie, the Board of Directors for the Authority will award priority based upon factors in the application such as: market need, number of affordable units; income/rent limitations; energy efficiency; and unit amenities.

- v. TCAP funds will be awarded based upon the highest score as determined under this subsection.
    - vi. The maximum amount of the TCAP fund award will be \$500,000.
  - e. Applicants requesting the maximum amount (\$500,000) of TCAP funding will be eligible for additional HOME funds not to exceed \$900,000, including any previous allocation. Recipients may use the additional HOME funds to reduce permanent debt, deferred developer fee, or other funding source in the ORIGINAL APPLICATION.
  - f. To be eligible for an Exchange/Subaward, the applicant must request, at a minimum, \$100,000 in TCAP funding. Equity created by an Exchange/Subaward can only be used to replace equity lost from the ORIGINAL APPLICATION.
  - g. If requesting Exchange/Subaward, applicants must provide the following:
    - i. Written statement from most recent investor/syndicator submitted to ADFA which indicates that the investor/syndicator has rescinded its previous equity commitment to the applicant. The written statement must reference the date and terms of the previous equity commitment rescinded and the amount rescinded. If the rescission is limited to a portion of the previous credit amount accepted and equity commitment, the investor/syndicator statement must specifically identify the amount of credits and amount of equity that remain accepted and committed;
    - ii. Written statement from nationally recognized investor/syndicator indicating that the investor/syndicator has been contacted by the applicant and rejected an offer to purchase any/all of the tax credits offered. The rejection must specifically identify the amount of credits offered and rejected. If the rejection is limited to a portion of the tax credits offered, the investor/syndicator statement must specifically identify the number of credits accepted for purchase and amount of equity to be paid for such purchase; and
    - iii. Sworn statement by the applicant that:
      - A. In addition to the investor/syndicator identified in subsection 2g.ii above, the applicant has contacted two additional nationally recognized investors/syndicators and they have rejected the purchase of any tax credits allocated to the applicant;
      - B. Each investor/syndicator contacted has made no offer/counter-offer to purchase credits allocated at any per credit price.
  - h. Recipients must provide official evidence, *e.g.*, building permit, construction permit, etc. that they can begin construction within 120 days of commitment of funding. Failure to produce this evidence will result in no eligibility to receive subsidy.
  - i. Applicants must certify that the development's buildings will be placed service as required by Section 42 of the Internal Revenue Code.
3. **Tier Three - 2009 APPLICANTS** - CONSIDERED AFTER DETERMINE AMOUNT OF CREDITS REMAINING AFTER TIER TWO AWARDS FOR PURPOSES OF AWARDING ADDITIONAL TAX CREDITS; TCAP AND/OR EXCHANGE/SUBAWARDS
- a. Funding availability will include:
    - i. Tax credits remaining after the 2007 and 2008 outstanding developments have been awarded additional tax credits and Exchange/Subaward;
    - ii. TCAP funds remaining after award to 2007 and 2008 outstanding developments
    - iii. Exchange funds available after award to 2007 and 2008 outstanding developments
    - iv. HOME funds availability.
  - b. 2009 applicants will be scored as required under the 2009 QAP.
  - c. 2009 applicants will be awarded remaining tax credits based upon the highest score. Following a reservation of the tax credit award, if any TCAP, Exchange/Subaward,

- or HOME funds remain available, applicants will be given an opportunity to request such funding with the highest scoring development receiving priority. In the event of a tie, the Board of Directors for the Authority will award priority based upon factors in the application such as: market need, number of affordable units; income/rent limitations; energy efficiency; and unit amenities.
- d. To be eligible for TCAP funds, the applicant must retain no less than \$1,000 in annual federal low-income housing tax credits, or, \$10,000 in the aggregate.
  - e. TCAP funds will be awarded based upon the following priorities:
    - i. Certification to a development timeline that verifies the development will expend 100% of the TCAP funds awarded no later than December 31, 2010 and will place in service no later than December 31, 2011. Failure to make the certifications eliminate the applicant's eligibility for funding separate from that in the applicant's ORIGINAL APPLICATION. Failure to adhere to the timelines required will result in a recapture of tax credits, TCAP or Exchange/Subaward funds, as applicable; and
    - ii. The highest score as determined under subsection c. above.
  - f. Applicants requesting the maximum amount (\$500,000) of TCAP funding will be eligible for additional HOME funds not to exceed \$900,000, including any previous allocation. Recipients may use the additional HOME funds to reduce permanent debt, deferred developer fee, or other funding source in the ORIGINAL APPLICATION.
  - g. To be eligible for an Exchange/Subaward, the applicant must have requested, at a minimum, \$100,000 in TCAP funding. Equity created by an Exchange/Subaward can only be used to replace equity lost from the ORIGINAL APPLICATION.
  - h. If requesting Exchange/Subaward, applicant must provide the following:
    - i. Written statement from most recent investor/syndicator submitted to ADFA which indicates that the investor/syndicator has rescinded its previous equity commitment to the applicant. The written statement must reference the date and terms of the previous equity commitment rescinded and the amount rescinded. If the rescission is limited to a portion of the previous credit amount accepted and equity commitment, the investor/syndicator statement must specifically identify the amount of credits and amount of equity that remain accepted and committed;
    - ii. Written statement from nationally recognized investor/syndicator indicating that the investor/syndicator has been contacted by the applicant and rejected an offer to purchase any/all of the tax credits offered. The rejection must specifically identify the amount of credits offered and rejected. If the rejection is limited to a portion of the tax credits offered, the investor/syndicator statement must specifically identify the number of credits accepted for purchase and amount of equity to be paid for such purchase; and
    - iii. Sworn statement by the applicant that:
      - A. In addition to the investor/syndicator identified in subsection 2h.ii above, the applicant has contacted two additional nationally recognized investors/syndicators and they have rejected the purchase of any tax credits allocated to the applicant;
      - B. Each investor/syndicator contacted has made no offer/counter-offer to purchase credits allocated at any per credit price.
  - i. Recipients must provide official evidence, *e.g.*, building permit, construction permit, etc. that they can begin construction within 120 days of commitment of funding. Failure to produce this evidence will result in no eligibility to receive subsidy.
  - j. Applicants must certify that the development's buildings will be placed service as required by Section 42 of the Internal Revenue Code.

**Board Approval**

Any award made pursuant to Arkansas' Three-Tier selection process is subject to the approval of the Board of Directors for the Arkansas Development Finance Authority. The Board of Directors has the authority to determine the amount of any additional tax credits, TCAP, Exchange/Subaward or additional HOME funds requests based upon the financial feasibility analysis of any applicant.

## **2009 Guidance and Procedures**

### **Tax Credit Assistance Program (“TCAP”)**

- ADFA’s TCAP Application has been accepted by HUD.
- \$20,463,053 available for 2007, 2008 and 2009 LIHTC “awardees.”
- “Awardee” defined to include those development owners publicly announced by Board of Directors as receiving a reservation of tax credits.
  - Does not include those development owners who returned their tax credits prior to enactment of ARRA.
- Apply by application as provided by ADFA.
- Award of TCAP funding based on:
  - a) Certification to timeline that verifies development will expend 100% of TCAP funds no later than November 15, 2010;
  - b) Final Score received during original round with 2008 amended to match 2007 criteria with award to highest final score;
  - c) 5 points for requesting “additional” tax credits
    - i. Total amount of tax credits to be allocated cannot exceed \$600,000 or \$625,000, if applicable.
    - ii. “Additional” tax credits do not include previously allocated credits or 2009 credits awarded or “swapped” in lieu of 2009 credits
    - iii. Commitment will be for at least \$.50 per credit
- Eligibility for TCAP:
  - a) 2007, 2008, and 2008 awardees
  - b) Must retain minimum amount of \$1,000 in annual federal low-income housing tax credits, or \$10,000 in the aggregate.
    - i. Cannot be “Disaster” credits only.
    - ii. Can be “swapped” 2009 credits.
    - iii. Must place in service in accordance with year of allocation of “retained” tax credits.
    - iv. If “retain” (swap for) 2009 tax credits, required to adhere to 2009 QAP including Minimum Design Standards – Universal Design requirements.
  - c) Maximum amount of award is \$500,000
    - Applicants requesting maximum amount of TCAP - \$500,000 – will be eligible to request additional HOME funds not to exceed \$900,000.
  - d) Applicant must provide official evidence, *e.g.*, building permit; construction permit, that can begin construction within 120 days of commitment of funding
  - e) Applicant must certify that the development’s buildings will be placed in service in accordance with Section 42 of the IRC.
- Commitment and Expenditure deadlines:
  - a. Within 90 days of selection, the Authority will complete environmental reviews on the selected developments;
  - b. Within 30 days of environmental clearance, the Authority will enter into a written agreement with the recipient committing payment of the TCAP award based on the following:
    - i. Recipient's agreement that TCAP funds will be awarded in the form of a loan, secured by mortgage, amortized over the term of the development's affordability period as selected in the recipient's tax credit application, to be payable monthly based on one-half surplus cash (to be defined), with a balloon payment of the balance at the end of the affordability period;
    - ii. Recipient's agreement that a covenant binding ownership and its successors will be recorded restricting the development property by those TCAP program



requirements and crosscutting federal grant requirements required by Notice CPD-09-03. Those requirements will be separately identified in the covenant;

- iii. Recipient's agreement that TCAP funds may only be used for capital investment. Capital investment will be defined to mean costs included in "eligible basis" (**not including 30% basis boost**), except costs associated with the construction, acquisition or rehabilitation of a swimming pool(s), under Section 42 of the Internal Revenue Code;
- iv. Recipient's agreement that costs incurred or expended prior to entry of the agreement are not eligible for TCAP funding.
- v. Recipient's agreement that it will not incur or expend costs for TCAP funding prior to the completion of a pre-construction conference between the recipient and the Authority and the issuance of a "Notice to Proceed" by the Authority;
- vi. Recipient's agreement that it will incur or expend "eligible" costs based upon the following timeline:
  - A. Within 90 days of "Notice to Proceed" – 25% of TCAP award;
  - B. Within 180 days of "Notice to Proceed" – 50% of TCAP award;
  - C. Within 270 days of "Notice to Proceed" – 75% of TCAP award;
  - D. No later than November 15, 2010 – 100% of TCAP award;
- vii. Recipient's agreement that failure to meet the deadline requirement of subsections b(vi)(A), b(vi)(B), or b(vi)(C), above, will require the recipient to set-aside an equivalent percentage, *i.e.*, 25%, 50%, or 75%, of its developer's fee into escrow. Said amount will be payable to the developer in equal annual payments over 15 years following placement in service of the development;
- viii. Recipient's agreement that failure to meet the deadline requirement of subsection b(vi)(D), above, will result in the de-obligation, *i.e.* non-payment of any remaining TCAP funds, plus recapture of all TCAP funding previously awarded to the recipient;
- ix. Recipient's agreement that payment of TCAP funds will be based upon a schedule set forth in the agreement after on-site inspections by the Authority and receipt of, at a minimum, the following:
  - A. Receipts or invoices of costs incurred or expended;
  - B. Certification by certified public accountant that the costs incurred or expended, as presented, constitute "eligible basis" under Section 42 of the Internal Revenue Code; and
  - C. Number of jobs created and retained during the period for which costs were incurred or expended; and
- x. Recipient's agreement that failure to place all buildings in the development in service in accordance with Section 42 will result in the recapture of all TCAP funding awarded to the recipient.
- xi. Recipient's agreement that the provisions of 26 U.S.C. § 42(h)(6)(E)(ii) -- 3-year tenant protections in event of foreclosure -- will apply to the development.

- Distribution of recaptured TCAP funds.

- a. Recaptured TCAP funds will be offered, in the order of the highest score, to any applicant that had previously applied for TCAP funds but did not receive the amount applied for due to a lack of TCAP funding.
- b. The maximum award of \$500,000 will apply to the award of recaptured TCAP funds.
- c. The commitment and expenditure timelines of Section b(vi) above will apply. Dependent upon the date of recapture, the Authority will have the discretion to set timelines different from those set forth in Section b(vi) above. However, any timelines determined by the Authority will be set to ensure compliance with

commitment and expenditure timelines imposed by the American Recovery and Reinvestment Act of 2009 and Section IV.C of Notice CPD-09-03.

- All commitment and expenditure timelines will be tracked and reported to HUD in IDIS

## **Section 1602 Grants in Lieu of Tax Credits (“Exchange Program”)**

- Available to developments placed in service after December 31, 2008.
- Acquisition costs for existing building(s) not eligible for Exchange Subaward if placed in service before January 1, 2009.
  - Acquisition basis cannot include value of cash reserves
- Apply by application as provided by ADFA. ADFA will have application form ready no later than June 26, 2009.
- Must have requested at least \$100,000 in TCAP funding
  - a) Which means must retain minimum amount of \$1,000 in annual federal low-income housing tax credits, or \$10,000 in the aggregate
  - b) Can be “swapped” 2009 credits
- Cannot receive Exchange Subaward if allocated “additional tax credits.”
- Can only be used to replace equity lost from ORIGINAL APPLICATION
- Cannot exceed eligible basis costs **not including 30% basis boost**.
  - TCAP plus Exchange funds cannot exceed eligible basis costs **not including 30% basis boost**.
- Must place in service in accordance with year of allocation of “retained” tax credits.
- Required to adhere to 2009 QAP including Minimum Design Standards – Universal Design requirements
- Applicant must provide the following:
  - a) Written statement from most recent investor/syndicator submitted to ADFA which indicates that the investor/syndicator has rescinded its previous equity commitment to the applicant.
  - b) Written statement from nationally recognized investor/syndicator indicating that the investor/syndicator has been contacted by the applicant and rejected an offer to purchase any/all of the tax credits offered.
  - c) Sworn statement by applicant that:
    - i. In addition to the investor/syndicator identified above, the applicant has contacted two additional nationally recognized investors/syndicators and they have rejected the purchase of any tax credits allocated to the applicant
    - ii. Each investor/syndicator contacted has made no offer/counter-offer to purchase credits allocated at any per credit price.
  - d) Applicant must provide official evidence, *e.g.*, building permit; construction permit, that can begin construction within 120 days of commitment of funding
  - e) Applicant must certify that the development’s buildings will be placed in service in accordance with Section 42 of the IRC.
  - f) Subaward will be in the form of a grant payable after costs incurred or expended.
- Must execute agreement with ADFA prior to disbursement that sets forth:
  - a) All Section 1602 program requirements;
  - b) Section 42 requirements;
  - c) Provides for recapture of funds when:
    - i. Failure to place in service in accordance with Section 42; or
    - ii. Percentage of low-income units falls below percentage of Exchange Subaward; or



- iii. Number of units falls below minimum set-aside
      - A. No partial recapture -- All or nothing on recapture amount
      - B. One unit out of compliance does not trigger recapture
    - iv. Recapture exposure amount decreases 6.67% for each full year of compliance
  - d) Requires recipient to provide the following information prior to any payment of Exchange Subaward:
    - i. Name of recipient entity
    - ii. Name of development
    - iii. Brief description of development
    - iv. Location of project: city/county/State/zip code
    - v. Number of construction jobs created
    - vi. Number of construction jobs retained
    - vii. Number of non-construction created
    - viii. Number of non-construction jobs retained
    - ix. Number of total housing units newly constructed
    - x. Number of total housing units rehabilitate
    - xi. Number of low-income housing units newly constructed
    - xii. Number of low-income units rehabilitated
  - e) Recipient's agreement that it will incur or expend "eligible" costs based upon the following timeline:
    - i. Within 90 days of "Notice to Proceed" – 25% of Exchange award;
    - ii. Within 180 days of "Notice to Proceed" – 50% of Exchange award;
    - iii. Within 270 days of "Notice to Proceed" – 75% of Exchange award;
    - iv. No later than November 15, 2010 – 100% of Exchange award;
  - f) Recipient's agreement that failure to meet the deadline requirement of subsections e(i); e(ii); e(iii), above, will require the recipient to set-aside an equivalent percentage, *i.e.*, 25%, 50%, or 75%, of its developer's fee into escrow. Said amount will be payable to the developer in equal annual payments over 15 years following placement in service of the development;
  - g) Recipient's agreement that failure to meet the deadline requirement of subsection e(iv), above, will result in the de-obligation, *i.e.* non-payment of any remaining TCAP funds, plus recapture of all TCAP funding previously awarded to the recipient;

- **Must incur or expend 100% of Exchange Subaward by November 15, 2010.**

#### 2009 Applications

- Will be based upon 2009 application
- Made before September 30, 2009
- 2009 applicants will be awarded tax credit remaining after the 2007 and 2008 outstanding developments have been awarded additional tax credits and Exchange/Subaward
  - Based upon the highest score
- Following a reservation of the tax credit award, if any TCAP, Exchange/Subaward, or HOME funds remain available, applicants will be given an opportunity to request such funding with the highest scoring development receiving priority
- Criteria for eligibility of TCAP and Exchange funds will be same as set forth above for the 2007 and 2008 awardees

#### Amendments

The above guidance is subject to change as necessary to administer the TCAP and Section 1602 Grants in Lieu of Tax Credit Programs in accordance with state and federal requirements.